Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of	)	
Comcast Corp. and Time Warner Cable Inc.	)	MB Docket No. 14-57
	)	
For Consent To Transfer Control of	)	
Licenses and Authorizations	)	

Comments of the Writers Guild of America, East, AFL-CIO

The Writers Guild of America, East, AFL-CIO (the "WGAE") submits these comments in opposition to the Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations (the "Applications")[1]. The proposed takeover of Time Warner Cable ("TWC") by Comcast/NBCU Universal would create an enormous vertically- and horizontally-integrated media mega-corporation with far too much power and control in the marketplace and in the workplace. It would not be in the public interest and should not be approved.

The WGAE represents thousands of members who write for movies, television, radio, and digital media. Our members work for the film studios, major television and radio networks and stations and for public television, where they write, produce, edit, as well as create graphics for news and public affairs programs. Their material is broadcast over the airwaves, distributed

[1] References are to the redacted version of the Applications filed on April 9, 2014.

on cable television, and posted on the Internet. They understand from direct experience how difficult it is to find opportunities to create meaningful work when the number of entities on the other side of the table bidding for their work continues to shrink through consolidation, and when the relative bargaining power of those entities continues to increase.

That is the fundamental problem with the proposed takeover: it would tilt the playing field even more sharply against the men and women who craft the stories that educate and entertain America and the world.

The new video/technology/broadband ecosystem

The Applications offer two very different perspectives on the proposed takeover. On one side the Applications suggest the takeover is a modest expansion of a humble cable television company's geographic, not even so much as to cover the "now-vacated" 30% limit. On the other side, this merger is depicted as a grand and awesome bulwark against a vast array of hyper-competitors, the creation of a powerhouse that is just adequate in size and breadth to survive its imminent battles with the titans of the digital technology world. Even viewed from the latter perspective, the merger/takeover should be rejected.

For the most part Comcast/NBCU asks to be regarded as a "leading communications, media, and technology company". Applications at p. 22. Comcast complains that, despite this grand aspiration, its market capitalization and annual revenue are a fraction of those of its ostensible competitors. Comcast asserts it faces direct competition from video-streaming offered by Google, Apple, Microsoft, and Amazon. Applications at 20-21.

Comcast/NBCU fails to acknowledge that, unlike any of the mega-tech companies it cites as competitors, with this deal it would own and control the pipelines into 30% of American households[2]. Apple, Microsoft, Google, Amazon, and other purported competitors in the media/tech marketplace all depend on Comcast to deliver what they sell. Everything they create or market is consumed via Comcast's pipeline. And – as befits communications/media/technology company – Comcast/NBCU also sells a wide variety of competing products over the same pipeline (original programming, video on demand, telephony, and so forth) . It's as if UPS or FedEx were also in the online or mail-order business. Or perhaps more to the point, imagine what it would have been like in a mid-century America in which telephone signals, telegraphs, radio shows, and (then-nascent) television shows all traveled to customers via wires owned and operated by pre-breakup AT&T, and that AT&T also sold telegram services and produced radio and television shows.

Thus, Comcast/NBCU would have us ignore the fact that a vertically- and horizontally-huge telecom/media/tech company would own and control the pipeline used by the company's competitors and, for the same purposes, by the company itself. Quoting economist Ev Erlich, the company contends the economies of scale created by the merger "will make the combined company a better competitor and innovator in the competitive cage match in which providers of connectivity, devices, apps, services and content fight for a share of the value the broadband world creates." Applications at p. 27. The problem with this cage match analogy is that, in truth, the competitors are all fighting for a share of a vast market which they can only access via the pipeline controlled by one of the combatants, Comcast/NBCU/TWC.

[2] We note that some analysts conclude the combined entity would dominate nearly 60% of the relevant market.

The Applications offer no insight about why the pipeline company should be permitted to bulk up in order to compete with the other companies that create and distribute content. Why should the FCC give Comcast/NBCU additional market power with which to profit from television programs and other motion pictures it produces, or from on-demand viewing options (e.g., Xfinity versus Netflix or Amazon Fire)? Comcast/NBCU's extensive vertical integration must be taken into account.

Comcast/NBCU notes that its proposed takeover of Time Warner Cable must be evaluated on its own, independent of previous violations and transactions. Applications at p. 19. Perhaps this refers in part to the Commission's prior approval of Comcast's takeover of NBC Universal. It is true that this takeover significantly advanced the company's incentive to favor its own products and services (e.g., shows and films produced or distributed by NBC's vast broadcast and cable channel networks and by Universal's enormous film studio). Granting Comcast/NBCU the substantially increased market power it expressly seeks by taking over TWC would only exacerbate the profound anti-competitive incentives created by the previous takeover. There is nothing inappropriate about considering the recently-completed merger when evaluating the impact of the now-proposed transaction. Our central contention is that a merged Comcast/NBCU/TWC would have far too much power in the marketplace – and in the workplace. One could only speculate whether the Comcast's market position would have been as overpowering had it not swallowed up NBCU.

Again, there is one pipe into American living rooms, and in most places one company controls that pipe – the cable company[3]. Multichannel video programming distributors (MVPDs) are also internet service providers (ISPs), and online video distributors (OVDs) depend on the distribution networks that are controlled by the MVPDs/ISPs. Increasing the anti-competitive nature of this new world, MVPD/ISP Comcast also owns one of the largest content-production entities in the world, NBC Universal. Thus Comcast/NBCU/TWC would be an extraordinarily-powerful, vertically- and horizontally-integrated behemoth with significant pricing power and built-in incentives to favor its own content over that created by others. This is not just do-gooder anxiety. The sober District of Columbia Court of Appeals, in its recent *Verizon v. FCC* opinion, approved the Commission's observation "that broadband providers – often the same entities that furnish end users with telephone and television services – 'have incentives to interfere with the operation of third-party Internet-based services that compete with the providers' revenue-generating . . . pay-television services'."

<u>Excessive leverage in the marketplace and in the workplace</u>

At the Writers Guild of America, East it is the increased leverage created by the merger that worries us. Our members write television, radio, feature film, and made-for-digital programs. It is better for content creators – and ultimately for the audiences they serve – to have as many opportunities as possible to pitch and develop compelling programs. Sitting across the table from vertically integrated behemoths like Comcast/NBCU makes it that much more

[3] In a few markets, telecoms also offer high-speed broadband and cable-like television packages. This applies to approximately 15% of households, and the key provider (Verizon) has stopped expanding. In any event, in that relative handful of markets, there are a grand total of two entities controlling the pipes into peoples' homes. That is hardly a competitive marketplace.

difficult to get good work made, distributed, and watched. There are fewer outlets to which we can offer our work and fewer to create a truly competitive environment for our work.

The Writers Guild of America, East also sits across the table from Comcast/NBCU as the representative of employees. For generations the men and women who write television series and feature films have been Guild-represented. More and more programs are nonfiction "reality" shows where the writer-producers have no health or pension benefits, no minimum compensation rates, and no representation of any kind. Comcast/NBCUniversal is currently thwarting efforts of writer-producers at the NBCUniversal-owned Peacock Productions to bargain for basic protections like minimum compensation rates, affordable health benefits, and paid time off.

These writer-producers came to our union in 2012, and we filed for an NLRB election in October of that year. NBCU lawyers claimed that half of these hard-working television professionals deserved no protection at all under the National Labor Relations Act and had no right to representation. After an extensive hearing, the NLRB ruled in April 2013 that all of these employees had the right to participate, and in June 2013 the NLRB conducted a secret ballot election. However, because of legal maneuvering by NBCU's attorneys, those ballots are still sitting in a box, uncounted - fully a year and a half after the process began.

That is the power and danger of a media conglomerate with pockets so deep it can afford to stall and evade even the most basic responsibility owed to its own employees - the responsibility to honor a secret ballot vote for representation. If this is how Comcast/NBCU treats its own employees now, imagine what it can put its customers through, and imagine how much worse this will be when it expands to gargantuan size through merger and consolidation.

We respectfully suggest that the Commission not permit Comcast/NBCU to take over Time Warner Cable and amass even more enormous power in the marketplace and in the workplace.

Comcast twc merger fcc april 14 version